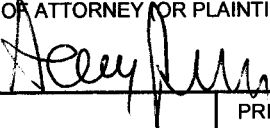


B 104 [08/07]

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)		
PLAINTIFFS GERALD H. DAVIS, TRUSTEE	DEFENDANTS MARK L. HAGEN LOIS D. HAGEN			
ATTORNEYS (Firm Name, Address, and Telephone No.) RUDOLPH LAW FIRM GARY B. RUDOLPH, ESQ. (#101921) 864 GRAND AVENUE - P.O. BOX 433 SAN DIEGO, CA 92109		Case # : 09-90470-JMAD Debtor.: DAVIS, CH. 7 TRUSTEE Judge.: JAMES MEYERS Chapter: AD ----- Filed : October 13, 2009 12:48:26 Deputy : SEAN SLAUGHTER Receipt: 306653 Amount : \$250.00 -----		
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee		PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) COMPLAINT FOR TURNOVER AND SALE OF MOTOR VEHICLE - 11 U.S.C. SECTIONS 363(h) and 542(a)				
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="vertical-align: top; width: 50%;"> FRBP 7001(1) – Recovery of Money/Property <input checked="" type="checkbox"/> 11 - Recovery of money/property - § 542 turnover of property <input type="checkbox"/> 12 - Recovery of money/property - § 547 preference <input type="checkbox"/> 13 - Recovery of money/property - § 548 fraudulent transfer <input type="checkbox"/> 14 - Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input checked="" type="checkbox"/> 21 - Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31 - Approval of sale of property of estate and of co-owner - § 363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41 - Objection / revocation of discharge - § 727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51 - Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66 - Dischargeability - § 523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62 - Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67 - Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div> </td> <td style="vertical-align: top; width: 50%;"> FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61 - Dischargeability - § 523(a)(5), domestic support <input type="checkbox"/> 68 - Dischargeability - § 523(a)(6), willful and malicious injury <input type="checkbox"/> 63 - Dischargeability - § 523(a)(8), student loan <input type="checkbox"/> 64 - Dischargeability - § 523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65 - Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71 - Injunctive relief - reinstatement of stay <input type="checkbox"/> 72 - Injunctive relief - other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81 - Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91 - Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01 - Determination of removed claim or cause Other <input checked="" type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§ 78aaa <i>et. seq.</i> <input type="checkbox"/> 02 - Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) </td> </tr> </table>			FRBP 7001(1) – Recovery of Money/Property <input checked="" type="checkbox"/> 11 - Recovery of money/property - § 542 turnover of property <input type="checkbox"/> 12 - Recovery of money/property - § 547 preference <input type="checkbox"/> 13 - Recovery of money/property - § 548 fraudulent transfer <input type="checkbox"/> 14 - Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input checked="" type="checkbox"/> 21 - Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31 - Approval of sale of property of estate and of co-owner - § 363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41 - Objection / revocation of discharge - § 727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51 - Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66 - Dischargeability - § 523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62 - Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67 - Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div>	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61 - Dischargeability - § 523(a)(5), domestic support <input type="checkbox"/> 68 - Dischargeability - § 523(a)(6), willful and malicious injury <input type="checkbox"/> 63 - Dischargeability - § 523(a)(8), student loan <input type="checkbox"/> 64 - Dischargeability - § 523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65 - Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71 - Injunctive relief - reinstatement of stay <input type="checkbox"/> 72 - Injunctive relief - other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81 - Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91 - Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01 - Determination of removed claim or cause Other <input checked="" type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§ 78aaa <i>et. seq.</i> <input type="checkbox"/> 02 - Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23		
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$ SUBJECT TO PROOF AT TIME OF TRIAL		
Other Relief Sought SALE OF DISPUTED CO-OWNED PROPERTY				

B 104

B 104 (Page 2) [08/07]

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR MARK L. HAGEN		BANKRUPTCY CASE NO. 08-03080-JM7
DISTRICT IN WHICH CASE IS PENDING SOUTHERN DISTRICT	DIVISIONAL OFFICE	NAME OF JUDGE JAMES MEYERS
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE 10-13-09	PRINT NAME OF ATTORNEY (OR PLAINTIFF) GARY B. RUDOLPH, ESQ.	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

Case # : 09-90470-JMAD
Debtor.: DAVIS, CH. 7 TRUSTEE
Judge.: JAMES MEYERS
Chapter: AD

Filed : October 13, 2009 10:15:17
Deputy : SEAN SLAUGHTER
Receipt: 206653
Amount : \$250.00

RUDOLPH LAW FIRM

Gary B. Rudolph, Esq. (#101921)

864 Grand Avenue

P.O. Box 433

San Diego, CA 92109

Tel. & Fax: (858) 412-6822

Proposed Attorney for Gerald H. Davis, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re

MARK L. HAGEN,

Debtor.

GERALD H. DAVIS, Chapter 7 Trustee,

Plaintiff,

v.

MARK L. HAGEN, an individual and
LOIS D. HAGEN, an individual,

Defendant.

Case No. 08-03080-JM7

Adversary No.

**COMPLAINT FOR TURNOVER AND
SALE OF MOTOR VEHICLE [11 U.S.C.
§§ 363(h) and 542(a)]**

Plaintiff, Gerald H. Davis, Chapter 7 Trustee ("Plaintiff"), alleges as follows:

JURISDICTION AND VENUE

1. This adversary proceeding is brought pursuant to 11 U.S.C. §§ 363(h), 542(a) and Rule 7001 of the Federal Rules of Bankruptcy Procedure.

2. This Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b) and 1334(b) in that it arises under Title 11 of the United States Code.

Original

FIRST CLAIM FOR RELIEF

[Sale of Entire Vehicle Pursuant to 11 U.S.C. §363(h)]

14. Plaintiff realleges and incorporates herein by this reference the allegations contained in paragraphs 1 through 13, inclusive, of this Complaint.

15. The Vehicle referenced in paragraph 10 is property of the bankruptcy estate under 11 U.S.C. § 541 which Plaintiff is entitled administer on behalf of the unsecured creditors of this estate.

16. Since Defendants Mark L. Hagen and Lois D. Hagen hold their respective interests in the subject Vehicle as co-owners, the Plaintiff may be authorized to sell both the estate's interest (Defendant Mark L. Hagen's 50% interest) and the interest of Defendant Lois D. Hagen as a co-owner (50% interest) in accordance with 11 U.S.C. Section 363(h).

17. Partition in kind of the subject Vehicle among the estate and co-owner Lois D. Hagen is impracticable; and the sale of the estate's undivided 50% interest in the subject vehicle would realize significantly less for the estate than sale of the subject Vehicle free of the interest of the co-owner Defendant Lois D. Hagen; and the benefit to the estate of the sale of the subject Vehicle free of the interest of the co-owner outweighs the detriment, if any, to the co-owner; and such Vehicle is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

SECOND CLAIM FOR RELIEF

(For Turnover of Property the Estate Pursuant to 11 U.S.C. § 542)

18. Plaintiff realleges and incorporates herein by this reference the allegations contained in paragraphs 1 through 17, inclusive.

19. On April 23, 2009, an Order was entered in the main bankruptcy case compelling Defendant Mark L. Hagen to turnover the subject Vehicle or its value to the possession of the Plaintiff as Docket No. 283.

20. As of the date of filing this Complaint, Defendant Mark L. Hagen has failed to turnover the subject Vehicle or its value to the Plaintiff.

21. Defendants Mark L. Hagen and Lois D. Hagen have a duty to turn over all estate property to the Plaintiff pursuant to 11 U.S.C. § 542(a).

22. As a proximate result of Defendant Mark L. Hagen and Lois D. Hagen's failure to turnover the subject Vehicle, the Plaintiff has suffered monetary damages in the approximate amount of \$20,000, according to proof a trial

23. By this complaint, Plaintiff demands that Defendants Mark L. Hagen and Lois D. Hagen turn over all right, title and interest in the Vehicle to the Plaintiff for sale under 11 U.S.C. § 363(h).

WHEREFORE, the Plaintiff prays for judgment against Defendants Mark L. Hagen and Lois D. Hagen as follows:

FIRST CLAIM FOR RELIEF

1. That judgment be entered in favor of the Plaintiff-Trustee and against the Defendants Mark L. Hagen and Lois D. Hagen authorizing and ordering the sale of the entire subject Vehicle by the Plaintiff-Trustee in accordance with 11 U.S.C. Section 363(h); and

2. That in accordance with 11 U.S.C. Section 363(j), that the Plaintiff-Trustee shall distribute the proceeds of sale to Defendant Lois D. Hagen as co-owner in accordance with her 50% interest in the subject Vehicle less costs and expenses incurred in the sale and turnover action; and

3. That the Court fix a time prior to sale of the subject Vehicle for the Defendant Lois D. Hagen to purchase the subject Vehicle at the price at which the proposed sale is to be consummated in accordance with 11 U.S.C. Section 363(i); and

4. For such other and further relief as the court deems just and proper.

SECOND CLAIM FOR RELIEF

1. That judgment be entered in favor of the Plaintiff for the benefit of the estate requiring Defendants Mark L. Hagen and Lois D. Hagen to turn over the subject Vehicle to Plaintiff for sale as alleged herein in accordance with 11 U.S.C. § 542.

2. For damages in the approximate amount of \$20,000.00
3. For interest, cost of suit and attorneys' fees, if appropriate.
4. For such other and further relief as the Court deems just and proper.

RUDOLPH LAW FIRM

Dated: October 13, 2009


By: 
Gary B. Rudolph, Esq.,
Proposed Attorney for Gerald H. Davis, Trustee

Exhibit "A"